

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2009-03

Dale A. Affonso
517 Longfellow Avenue
Hermosa Beach, CA 90254

Certified Public Accountant
Certificate No. CPA 29994,

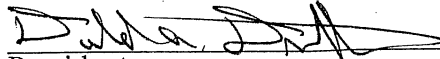
Respondent.

DECISION AND ORDER ACCEPTING LICENSE SURRENDER

The attached Stipulated Surrender and Order, accepting the surrender of CPA Certificate No. 29994 issued to Dale A. Affonso, is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 26, 2008, 2008. It is so ORDERED

September 26, 2008.



President

FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 WILBERT E. BENNETT, Supervising Deputy Attorney General
JEANNE C. WERNER, State Bar No. 93170
3 DIANN SOKOLOFF, State Bar. No. 161082
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1515 Clay Street, 21st Floor - P. O. Box 70550
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Telephone: (510) 622-2212 - Facsimile: (510) 622-2270

6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 Dale A. Affonso
517 Longfellow Avenue
Hermosa Beach, CA 90254

13 Certified Public Accountant
14 Certificate No. CPA 29994,

15 Respondent.

Case No. AC-2009-3 (Affonso)
In re: KPMG Tax Shelters

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 Consistent with the public interest and the responsibilities of the California Board of
18 Accountancy of the Department of Consumer Affairs, the parties hereby agree to the following
19 Stipulated Surrender and Order which will be submitted to the Board for approval and adoption
20 as the final disposition of the Amended Accusation filed herein.

21 **PARTIES AND JURISDICTION**

22 1. Daniel Rich, Complainant, is the Acting Executive Officer of the California Board of
23 Accountancy (the "Board"). He brought this action solely in his official capacity and is
24 represented in this matter by Edmund G. Brown, Jr., Attorney General of the State of California,
25 and by Diann Sokoloff, Deputy Attorney General.

26 2. On or about July 25, 1980, the Board issued Certified Public Accountant Certificate
27 No. 29994 to Dale A. Affonso, Respondent. Issued and maintained in an active status until its
28 renewal in an inactive status in July 2006, the license is renewed in an inactive status through

1 September 30, 2008. Respondent is represented in this proceeding by attorney Robert L. Corbin
2 of Corbin, Fitzgerald & Athey LLP.

3 3. Amended Accusation No. 2009-3 has been filed before the Board and is currently
4 pending against Respondent. The Amended Accusation and all other statutorily required
5 documents were properly served on Respondent and Respondent timely filed his Notice of
6 Defense contesting the Amended Accusation. A copy of the Amended Accusation is attached as
7 Exhibit A and incorporated herein by reference. The parties stipulate that the Board has
8 jurisdiction in this matter.

9 **WAIVERS & CONTINGENCY**

10 4. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in the Amended Accusation. Respondent has also carefully read, fully
12 discussed with counsel, and understands the effects of, this Stipulated Surrender of License and
13 Order.

14 5. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Amended Accusation; the right to be represented by
16 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
17 the right to present evidence and to testify on his own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws. Respondent voluntarily,
21 knowingly, and intelligently waives and gives up each and every right set forth above.

22 6. It is understood that in signing this stipulation, Respondent is voluntarily consenting to
23 the adoption of this Stipulated Surrender and Order as the Board's Decision in Case No. 2009-3,
24 enabling the Board to issue the following order without further legal process. Respondent
25 represents that no tender, offer, promise, threat or inducement of any kind whatsoever have been
26 made by the Board or any member, officer, agent or representative thereof in consideration of
27 this offer or otherwise to induce him to so consent.

28 7. This stipulation shall be subject to approval by the Board. Respondent understands

1 and agrees that counsel for Complainant and the staff of the Board may communicate directly
2 with the Board regarding this stipulation and settlement, without notice to or participation by
3 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that
4 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
5 considers and acts upon it.

6 8. If the Board does not adopt this stipulation as its Decision and Order, the Stipulated
7 Surrender shall be withdrawn. It shall be of no force or effect, except for this paragraph. It shall
8 have no evidentiary value, shall be inadmissible in any legal action between the parties, and shall
9 not be relied upon or introduced in any disciplinary, or other, action or proceeding by either party
10 hereto. In the event that the Stipulated Surrender is not adopted, nothing recited herein shall be
11 construed as a waiver of Respondent's right to a hearing on the truth of the Amended
12 Accusation's charges, or a waiver of any other right, including those rights expressly waived in
13 the Stipulated Surrender. Communications pursuant to this paragraph, and consideration of this
14 matter, shall not disqualify the Board or other persons from future participation in this or any
15 other matter affecting Respondent. Respondent agrees that should the Board reject the Stipulated
16 Surrender and if this case proceeds to hearing, Respondent will assert no claim that the Board
17 was prejudiced by its review and discussion of the Stipulated Surrender or of any records related
18 hereto. In the event that the Stipulated Settlement is not adopted, Respondent is not precluded
19 from filing a Special Notice of Defense within fifteen days of his counsel being notified in
20 writing that the Stipulated Settlement was not adopted.

21 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

22 9. Respondent denies each and every charge and each and every allegation of
23 wrongdoing set forth in the Amended Accusation. Nevertheless, Respondent no longer wishes to
24 practice as a Certified Public Accountant pursuant to the privileges accorded to him by the
25 California Board of Accountancy, Department of Consumer Affairs and does not want to incur
26 the expense of contesting the charges in the Amended Accusation. Therefore, solely for the
27 purpose of resolving the charges and allegations in the Amended Accusation without further
28 proceedings, Respondent hereby gives up the right to contest those charges for purposes of

1 resolving these proceedings. However, Respondent agrees that, as provided herein in paragraph 2
2 of the Order, should Respondent apply for licensure as a CPA, the charges will be deemed
3 admitted.

4 10. Respondent understands that by signing this stipulation he enables the Board to issue
5 an order accepting the surrender of his CPA Certificate without further process. Respondent
6 understands that the surrender of the CPA Certificate and the acceptance of the surrendered
7 license by the Board, is considered by the Board to be the imposition of discipline against
8 Respondent. Upon acceptance of Respondent's license surrender by the Board according to the
9 terms of this stipulation, the license will be canceled.

10 11. The parties understand and agree that facsimile copies of this Stipulated Surrender
11 and Order, including facsimile signatures thereto, shall have the same force and effect as the
12 originals.

13 IN CONSIDERATION OF THE FOREGOING stipulations, the parties agree that the
14 Board may, without further notice or formal proceeding, issue and enter the following Order:

15 **ORDER**

16 IT IS HEREBY ORDERED that the surrender of Certified Public Accountant Certificate
17 Number CPA 29994 to Dale A. Affonso, is accepted by the California Board of Accountancy.

18 1. Respondent Affonso shall lose all rights and privileges as a Certified Public
19 Accountant in California as of the effective date of the Board's Decision and Order, and his
20 license will be canceled.

21 2. Respondent Affonso understands and agrees that if he ever applies for licensure or
22 petitions for reinstatement in the State of California, the Board shall treat it as a new application
23 for licensure. Respondent must comply with all the laws, regulations and procedures for
24 licensure in effect at the time the application or petition is filed, and all of the charges and
25 allegations contained in the Amended Accusation shall be deemed to be true, correct, and
26 admitted by Respondent when the Board determines whether to grant or deny the application or
27 petition.

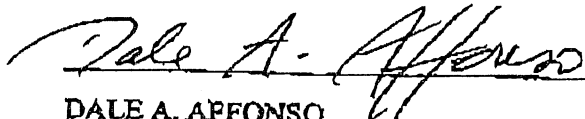
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ACCEPTANCE

I have carefully read the above Stipulated Surrender and Order and have fully discussed it with my attorney, Robert L. Corbin. I understand the stipulation and the effect it will have on my CPA Certificate. I enter into this Stipulated Surrender and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: September 9, 2008.


DALE A. AFFONSO
Respondent

I have read and fully discussed with Respondent Dale A. Affonso the terms and conditions and other matters contained in the above Stipulated Surrender and Order. I approve its form and content.

DATED: September 9, 2008.

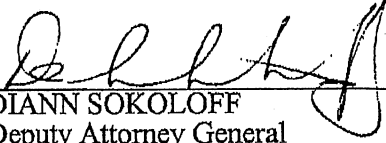

ROBERT CORBIN
CORBIN, FITZGERALD & ATHEY LLP
601 West Fifth Street, Suite 1150
Los Angeles, CA 90071-2024
(213) 533-7030
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender and Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 9/9, 2008.

EDMUND G. BROWN JR., Attorney General
of the State of California



DIANN SOKOLOFF
Deputy Attorney General

Attorneys for Complainant

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 WILBERT E. BENNETT, Supervising Deputy Attorney General
JEANNE C. WERNER, State Bar No. 93170
3 DIANN SOKOLOFF, State Bar. No. 161082
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6 Attorneys for Complainant

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8 **BEFORE THE**
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DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 DALE A. AFFONSO
12 517 Longfellow Avenue
Hermosa Beach, CA 90254

13 Certified Public Accountant
14 Certificate No. CPA 29994,

15 Respondent.

Case No. AC-2009-3 (Affonso)
In re: KPMG Tax Shelters

AMENDED ACCUSATION

16
17 Daniel Rich, the Complainant herein, alleges:

18 **PARTIES AND JURISDICTION**

19 1. The Complainant herein, Daniel Rich, brings this Amended Accusation under Business
20 and Professions Code Section 5100 solely in his official capacity as the Acting Executive Officer
21 of the California Board of Accountancy, Department of Consumer Affairs ("Board").

22 2. On or about July 25, 1980, the Board issued Certified Public Accountant Certificate
23 No. 29994 to Dale A. Affonso, Respondent. Issued and maintained in an active status until its
24 renewal in an inactive status in July 2006, the license is renewed in an inactive status through
25 September 30, 2008.^{1/}

26
27 1. Respondent's address of record with the Board has included, in the past, addresses in the
28 San Francisco Bay area where he worked in offices of KPMG LLP, followed by an address at the
Las Vegas, Nevada, office of KPMG. Respondent's address of record was subsequently changed
to the Los Angeles office of KPMG, and was changed to the current address in 2004.

1 3. This Amended Accusation is brought before the Board under the authority of Section
2 5100 of the Business and Professions Code, which provides, in relevant part, that, after notice
3 and hearing, the Board may revoke, suspend or refuse to renew any permit or certificate granted
4 for unprofessional conduct which includes, but is not limited to, one or any combination of the
5 causes specified therein, including willful violations of the Accountancy Act and willful
6 violations of rules and regulations promulgated by the Board.

7 4. Business and Professions Code^{2/} Sections 118(b) and 5109 provide in pertinent part
8 that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall
9 not deprive the Board of its authority to investigate, or to institute or continue a disciplinary
10 proceeding against, a licensee upon any ground provided by law, or to enter an order suspending
11 or revoking the license or otherwise taking disciplinary action against the licensee on any such
12 ground.

13 **STATUTORY AND REGULATORY PROVISIONS**

14 5. Code Section 5100 provides, in relevant part, that, after notice and hearing the board
15 may revoke, suspend or refuse to renew any permit or certificate granted, or may censure the
16 holder of that permit or certificate, for unprofessional conduct which includes, but is not limited
17 to, one or any combination of the causes specified therein, including, in pertinent part:

18 5100(c) Dishonesty, fraud, (or) gross negligence...in the practice of public
19 accountancy.

20 5100(g) Willful violation of the Accountancy Act or a board rule promulgated
21 thereunder.

22 5100(j) Knowing preparation, publication, or dissemination of false, fraudulent or
23 materially misleading financial statements, reports, or information.

24 6. Licensees are required by Board Rule 5 to comply with all Board rules, including
25 Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall
26 comply with all applicable professional standards.

27 _____
28 2. All statutory references are to the Business and Professions Code unless otherwise
indicated.

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1 practitioner to clients with reference to any matter administered by the Internal
2 Revenue Service.”

3 (3.) Section 10.34 Standards for Advising with Respect to Tax Return Positions and
4 for Preparing or Signing Returns. 31 CFR 10.34(a) provides that a practitioner may not sign a
5 tax return as a preparer if the practitioner determines that the tax return contains a position that
6 does not have a realistic possibility of being sustained on its merits (the “realistic possibility
7 standard”) unless the position is not frivolous and is adequately disclosed to the Internal Revenue
8 Service.

9 C. American Institute of Certified Public Accountants (AICPA) *Code of*
10 *Professional Conduct*, which includes Section I - Principles and Section II - Rules. Both the
11 Principles (Articles III and VI) and the Rules are relevant to the allegations herein. For example,
12 Rule 102 (Integrity and Objectivity), provides that:

13 "In the performance of any professional service, a member shall maintain
14 objectivity and integrity, shall be free of conflicts of interest, and shall not
15 knowingly misrepresent facts or subordinate his or her judgment to others."

16 D. *AICPA Statements on Standards for Tax Standards*^{5/}, including:

17 (1.) TS Section 100 - Tax Return Positions. For example, a member should not
18 recommend that a tax return position be taken with respect to any item unless the member has a
19 good-faith belief that the position has a realistic possibility of being sustained administratively or
20 judicially on its merits if challenged. TS Section 100.02a.

21 **Cost Recovery**

22 8. Code Section 5107(a) provides in pertinent part that the Executive Officer of the Board
23 may request the administrative law judge, as part of the proposed decision in a disciplinary
24 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
25 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and
26 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
27 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of

28 5. The AICPA *Statements on Standards*, Tax Standards, are codified as “TS” with section
numbers, e.g., TS Section 100.

1 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of
2 investigation and prosecution of the case.

3 **Public Protection**

4 9. Code Section 5000.1 provides as follows: "Protection of the public shall be the highest
5 priority for the California Board of Accountancy in exercising its licensing, regulatory, and
6 disciplinary functions. Whenever the protection of the public is inconsistent with other interests
7 sought to be promoted, the protection of the public shall be paramount."

8 **FACTUAL BACKGROUND**

9
10 10. The subject matter of this Amended Accusation is the Respondent's participation in the
11 development, promotion, and implementation of certain tax shelter schemes by himself and other
12 KPMG^{6/} personnel, including senior partners and members of top management, which assisted
13 high net worth United States citizens to evade United States individual income taxes on billions
14 of dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax
15 shelters.^{7/ 8/}

16
17 6. At all times relevant to this Amended Accusation, KPMG was a limited liability
18 partnership headquartered in New York, New York, with more than 90 offices nationwide, of which
19 several are in California. Among the California KPMG offices during the time period relevant
20 herein were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and Walnut Creek.
21 KPMG was one of the largest auditing firms in the world, providing audit services to many of the
22 largest corporations in the United States and elsewhere. KPMG also provided tax services to
23 corporate and individual clients, some of whom were very wealthy. These tax services included, but
24 were not limited to, preparing federal and state tax returns, providing tax planning and tax advice,
25 and representing clients, for example, in Internal Revenue Service ("IRS") and Franchise Tax Board
26 ("FTB") audits, and in Tax Court litigation with the IRS.

27 7. The portion of KPMG's tax practice that specialized in providing tax advice to
28 individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP."
The KPMG group focused on designing, marketing, and implementing tax shelters for individual
clients was known at different times as **CaTS** ("Capital Transaction Strategies"), and **IS** ("Innovative
Strategies").

29 8. KPMG personnel also formed alliances, operating agreements, and/or joint ventures with
outside persons, including former partners, employees, and others. KPMG also worked with law
firms/lawyers and with banks in implementing the FLIP, OPIS, BLIPS and SOS tax shelter
transactions. Significant activity and coordination regarding the design and implementation of the

1 11. At all times relevant to this Amended Accusation, Respondent was an employee of
2 KPMG LLP^{2/}. First employed by the firm in or about 1981, he became a tax partner in KPMG's
3 San Francisco Bay area office(s) in or about 1985, and subsequently worked in the Las Vegas,
4 Nevada, and Los Angeles area KPMG offices until he left the firm on a date known to
5 Respondent but not known to Complainant.^{10/}

6 12. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of Facts
7 attached to the Deferred Prosecution Agreement which KPMG entered with the federal
8 government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the Board,
9 KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached to the
10 DPA (which was incorporated into Accusation AC-2006-28),

11 "through the conduct of certain KPMG tax leaders, partners, and employees,
12 during the period from 1996 through 2002, KPMG assisted high net worth
13 individuals to evade individual income taxes on billions of dollars by
14 developing promoting, and implementing unregistered and fraudulent tax
shelters. A number of KPMG tax partners engaged in conduct that was
unlawful and fraudulent...". (Accusation, Paragraph 57, quoting DPA.)^{11/}

15 13. Respondent was a tax partner at KPMG between 1996 and 2002, the period relevant
16 herein. He participated in the above-described scheme, consisting of:

17 A. devising, marketing, and implementing fraudulent tax shelters;

18 B. preparing and causing to be prepared, and filing and causing to be filed with the
19 IRS false and fraudulent U.S. individual income tax returns containing the fraudulent tax shelter

20 _____
21 tax shelters took place by California licensees or on behalf of California taxpayers.

22 9. KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating
23 several offices in California. KPMG was engaged in providing tax services to corporate and
24 individual clients and providing audit services to corporate, governmental and other clients. The
Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective January
18, 2008. It is further referenced in paragraph 13.

25 10. Several other KPMG personnel, including partners, managers, associates, and employees,
26 participated in various tax shelter transactions referred to herein, and will be referred to as "KPMG
27 tax personnel." Others not employed at KPMG, including banks, lawyers and law firms, and other
individuals and entities, also participated in various tax shelter transactions referred to herein.

28 11. See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11
of Stipulation AC-2006-28 for detail.

1 losses; and

2 C. fraudulently concealing those shelters from the IRS.

3 **FLIP and OPIS, BLIPS, and SOS Tax Shelters**

4 14. The fraudulent tax shelter transactions which are the subject matter of this Amended
5 Accusation were **FLIP** ("Foreign Leveraged Investment Program"), **OPIS** ("Offshore Portfolio
6 Investment Strategy"), **BLIPS** ("Bond Linked Issue Premium Structure"), **SOS** ("Short Option
7 Strategy") and their variants, described below.^{12/}

8 15. Respondent was the KPMG engagement partner on at least one BLIPS^{13/} transaction,
9 and was generally involved in two FLIP^{14/} transactions, an OPIS^{15/}

10
11 12. During the relevant time period, KPMG personnel, some of its clients, and others
12 involved in these tax shelter transactions prepared, signed and filed tax returns that falsely and
13 fraudulently claimed over \$ 4.2 billion in phony tax losses generated by FLIP and OPIS transactions,
14 and \$5.1 billion generated by BLIPS transactions. A significant proportion of the taxpayers who
15 filed tax returns with KPMG's assistance using the FLIP, OPIS, BLIPS and SOS tax shelters were
California taxpayers. Approximately 29% of the transactions were in California and approximately
38% of KPMG's fees originated in California.

16 13. BLIPS was designed to generate any amount of capital and ordinary tax losses through
17 a series of pre-arranged transactions that involved the client purportedly borrowing money from one
18 of four banks (of which three were audit clients of KPMG at the time) in order to make purported
19 foreign currency investments including currencies that were "pegged" to the United States dollar.
20 The bank involved in the purported loan also served as the counter party on all of the purported
21 currency and other transactions involved in BLIPS. The transaction was designed so that, after a
22 short period of time (almost always approximately 60 days), the client would exit the purported
BLIPS transaction and trigger the desired tax loss. BLIPS was marketed and sold by KPMG from
at least in or about 1999 through at least in or about 2000 to at least 186 wealthy individuals, and
generated at least \$5.1 billion in phony tax losses. KPMG's gross fees from BLIPS transactions were
at least \$53 million.

23 14. FLIP was essentially similar to OPIS. The shelters were designed to generate phony
24 capital losses in excess of \$20 million through the use of an entity created in the Cayman Islands.
25 The client purportedly entered into an "investment" transaction with the Cayman Islands entity by
26 purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity
27 purportedly made a pre-arranged series of investments, including the purchase, from a bank, of bank
stock using money purportedly loaned by the bank, followed by a repurchase of that stock by the
pertinent bank at a prearranged price. The tax shelter transactions were devised to last for only
approximately 16 to approximately 60 days, and the duration of the shelter was pre-determined.

28 15. OPIS was essentially similar to FLIP, described in the footnote above. KPMG's gross
fees from OPIS transactions were at least \$28 million.

1 transaction, and a SOS^{16/} transaction. In addition, Respondent performed his own SOS
2 transaction and was generally involved in another SOS transaction that a former KPMG partner
3 undertook for his own account.

4 16. The law in effect from at least in or about August 1997 provided that if a taxpayer
5 claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties,
6 ranging from 20%-40% of the underpayment of tax attributable to the shelter, **unless** the tax
7 benefit was supported by an **independent opinion** relied on by the taxpayer in good faith that the
8 **tax benefit was "more likely than not"** to survive IRS challenge.

9 FLIP and OPIS Shelters

10 17. In all material respects, **FLIP and OPIS** were the same. FLIP and OPIS were
11 generally marketed only to people who had capital gains in excess of \$10 million for FLIP and
12 \$20 million for OPIS.^{17/}

13 18. Respondent was generally involved in several FLIP and OPIS transactions, the number
14 of which is known to Respondent but not to Complainant. Respondent, with the assistance of
15 other KPMG tax personnel and their associates, issued and caused to be issued opinion letters
16 although he knew, *inter alia*, that tax positions taken were not "more likely than not" to prevail
17 against an IRS challenge if the true facts regarding those transactions were known to the IRS;

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21 16. SOS and its variants were designed to generate substantial capital and ordinary tax losses
22 through a series of pre-arranged transactions that involved the clients entering into virtually
23 offsetting foreign currency option positions with a bank, sometimes transferring the offsetting
positions to a partnership or other entity, and then withdrawing from the transaction, claiming a loss
in the desired amount.

24 17. In return for fees totaling approximately 7% of the desired tax loss, including a fee to
25 KPMG equal to approximately 1.25% of the desired tax loss, KPMG, its KPMG tax personnel and
26 their associates implemented and caused to be implemented FLIP and OPIS transactions and
27 generated and caused to be generated false and fraudulent documentation to support the transactions,
including but not limited to KPMG opinion letters claiming that the purported tax losses generated
28 by the shelters were "more likely than not" to withstand challenge by the IRS. As agreed to, and
arranged by, KPMG tax personnel, outside lawyers also issued "more likely than not" opinion letters
in return for fees typically of approximately \$50,000 per opinion, which opinions tracked, sometimes
verbatim, the KPMG opinion letter.

1 and that the opinion letters and other documents used to implement FLIP and OPIS were false
2 and fraudulent in a number of ways, including that:

3 a. Money was paid by the FLIP and OPIS clients for an "investment" component of
4 the transactions (a warrant or a swap), whereas in fact that money constituted fees paid to KPMG
5 and other participants, as well as money that was temporarily "parked" in the deal but ultimately
6 returned to the client.

7 b. There was no evidence of a "firm and fixed" plan to complete the steps making up
8 the shelter in a particular manner when, in fact, there was such a plan, and the transactions in fact
9 were designed to be completed, and were completed, in the particular manner designed to
10 generate the tax loss.

11 c. The clients were not "more likely than not" to survive an IRS challenge (based on
12 the "step transaction doctrine").^{18/}

13 BLIPS Shelter

14 19. Respondent KPMG and its tax personnel and associates marketed and caused to be
15 marketed, and implemented and caused to be implemented the transactions, and generated and
16 caused to be generated false and fraudulent documentation to support the BLIPS transactions.^{19/}
17 This activity included, but was not limited to, generating KPMG opinion letters (and opinion
18 letters by law firm(s)) that claimed that the purported tax losses generated by the shelters were
19 more likely than not to withstand challenge by the IRS. All of these opinion letters were almost
20 identical.

21 20. Respondent was the engagement partner on at least one BLIPS transaction. He caused
22

23 18. The "step transaction doctrine" is a legal doctrine permitting the IRS to disregard certain
24 transactions having no economic substance or business purpose and the purported tax effects of those
25 disregarded transactions.

26 19. BLIPS generated at least \$5.1 billion in phony tax losses. KPMG's gross fees from
27 BLIPS transactions were at least \$53 million. Associated law firms and boutique practices had gross
28 fees of at least \$147 million. The fees totaled approximately 7% of the desired tax loss, including
a fee to KPMG equal to approximately 1.25% of the desired tax loss, a fee to a "boutique practice"
equal to approximately 2.75% of the desired tax loss, and a fee to a law firm generally equal to
approximately \$50,000 per transaction.

1 to be issued opinion letters related to this and other BLIPS transactions although he knew or
2 should have known that (i) the tax positions taken were not more likely than not to prevail
3 against an IRS challenge if the true facts regarding those transactions were known to the IRS, and
4 (ii) the opinion letters and other documents used to implement BLIPS were false and fraudulent
5 in a number of ways, including but not limited to the following:

6 a. BLIPS was falsely described as a three-stage, seven-year investment program,
7 when in truth and in fact, all participants were expected to withdraw at the earliest opportunity
8 and within the same tax year in order to obtain their tax losses. BLIPS was falsely described as a
9 "leveraged" investment program, whereas, in fact, the purported loan transactions that were part
10 of BLIPS (and that were the aspect of BLIPS that purported to generate the tax loss) were shams
11 -- no money ever left the bank and none of the banks assigned any capital cost to these purported
12 BLIPS loans.

13 b. The BLIPS opinion letters falsely stated that the client (based on the client's
14 purported "independent review", as well as that of outside "reviewers") "believed there was a
15 reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions," when
16 in truth and in fact, there was no "reasonable likelihood of earning a reasonable pre-tax profit"
17 from BLIPS, and instead the "investment" component of BLIPS was negligible, unrelated to the
18 large sham "loans" that were the key elements of the purported tax benefits of BLIPS, and was
19 simply window dressing for the BLIPS tax shelter fraud.

20 c. The opinion letters and other documents were misleading in that they were drafted
21 to create the false impression that KPMG, its tax personnel, and others associated with the tax
22 shelter scheme were all independent service providers and advisors, when in truth and in fact
23 KPMG personnel and associates jointly developed and marketed the BLIPS shelter.

24 21. At various points during the development of BLIPS, KPMG tax personnel identified
25 various significant defects of BLIPS, including that the description of BLIPS and the factual
26 representations contained in the BLIPS opinion letter and in other documents were false.
27 Nevertheless, in or about 1999, the marketing of BLIPS by the firm was approved. Likewise,
28 the risks of proceeding with implementation of BLIPS in 2000 were discussed. Nevertheless,

1 and despite the obviously fraudulent nature of BLIPS and the warnings conveyed, KPMG tax
2 personnel decided not to refund BLIPS fees and to proceed with the issuance of "more likely than
3 not" opinion letters on all of the 1999 transactions with the intent that BLIPS clients would claim
4 the phony BLIPS losses on 1999 tax returns. KPMG tax personnel and others, including
5 Respondent, continued to implement more BLIPS tax shelter transactions in 2000 and, in 2001.

6 SOS Shelters

7 22. SOS^{20/} opinion letters, and other associated documents, were false and fraudulent in a
8 number of ways well known to KPMG and its associates, including the following:

9 a. They falsely and misleadingly described SOS as an investment, when in truth and
10 in fact, it was a tax shelter designed and marketed to generate tax losses in order to eliminate
11 income taxes for wealthy clients and garner substantial fees and income for KPMG and others.

12 b. They falsely claimed that the client would have entered into the option positions
13 independent of the other steps that made up SOS, when in truth and in fact, the clients would not
14 have entered into those positions absent the anticipated tax losses to be generated.

15 c. They falsely claimed that the option positions were contributed to a partnership or
16 other entity to "diversify" the client's "investment" when in truth and in fact, the contribution was
17 simply a necessary step in the tax shelter, was executed for the purpose of generating the tax loss,
18 and was not executed to "diversify" any "investment."

19 d. They falsely claimed that the offsetting option positions were entered into for
20 "substantial non-tax business reasons," and were contributed to the partnership or other entity for
21 "substantial non- tax business reasons," when in truth and in fact, the transactions were
22 undertaken in order to generate the phony tax losses SOS purported to generate and not for any
23 "substantial non-tax business reason."

24 23. Respondent employed this false and fraudulent documentation in order to assist clients

25
26 20. The SOS shelters were referred to by various names, including Short Option Strategy,
27 Spread Option Strategy, Split Option Strategy, SOS, Binary Option, Digital Option, Gain Mitigator,
28 Loss Generator, COINS, BEST, and FX Transaction (hereinafter "SOS"). The SOS shelters
generated at least \$1.9 billion in phony tax losses. KPMG's gross fees from SOS transactions were
at least \$17 million. SOS was marketed and sold from at least in or about 1998 through at least in
or about 2002 to at least 165 wealthy individuals.

1 in claiming the phony tax shelter losses on tax returns and in evading taxes. Respondent
2 performed his own SOS transaction and was also generally involved in at least one SOS
3 transaction performed for another KPMG employee.

4 **Fraudulent Concealment of Tax Shelters**

5 24. In addition to preparing and causing to be prepared false and fraudulent documentation
6 relating to and implementing the shelter transactions, and in addition to preparing and causing to
7 be prepared tax returns that fraudulently incorporated the phony tax shelter losses, Respondent
8 participated in steps taken to fraudulently conceal from the IRS the fraudulent tax shelters, and/or
9 knew or should have known that the steps would have the effect of concealing the shelters from
10 the IRS. The steps taken included, but were not limited to, the following:

11 (1.) not registering the tax shelters with the IRS as required by law^{21/};

12 (2.) preparing and causing to be prepared tax returns that fraudulently concealed the
13 phony losses from the IRS; and

14 (3.) attempting to conceal from the IRS the tax shelter losses and transactions with
15 sham attorney-client privilege claims.

16 **Failing to Register Tax Shelters**

17 25. Under the law in effect at all times relevant to this Amended Accusation, an organizer
18 of a tax shelter was required to "register" the shelter by filing a form with the IRS describing the
19 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
20 claiming a benefit from the shelter were required to include with their income tax returns a form
21 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
22 registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided
23

24 21. Under the law in effect at all times relevant to this Amended Accusation, an organizer
25 of a tax shelter was required to "register" the shelter by filing a form with the IRS describing the
26 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
27 claiming a benefit from the shelter were required to include with their income tax returns a form
28 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
registration number. Notwithstanding these legal requirements, KPMG and its personnel, and others,
caused the entities with which they were associated not to register as required any of the tax shelters
they devised, marketed and implemented, and thereby ensured that registration numbers would not
be included on returns relating to unregistered shelters.

1 not to register the tax shelters based on a "business decision" that to register the shelters would
2 hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement
3 to register the shelters.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **Fraud in the Practice of Public Accountancy** 6 **[Business and Professions Code § 5100(c)]**

7 26. The matters alleged in paragraphs 10 through 28 are re-alleged as though fully set
8 forth.

9 27. Respondent, serving as the engagement partner for, or involved in, a number of tax
10 shelter transactions, among them those listed above, participated in employing various means to
11 conceal from the IRS and other taxing authorities the fraudulent tax shelters. Respondent's
12 license is therefore subject to disciplinary action based on his involvement or acquiescence in:

13 A. The failure of KPMG to register the tax shelters as required;

14 B. The preparation of, or causing to be prepared, false or fraudulent documentation
15 supporting the implementation of the tax shelters; and/or

16 C. The implementation of the tax shelters, including but not limited to preparing
17 and/or causing to be prepared or participating in the preparation and/or filing of tax returns that
18 fraudulently concealed the phony losses from the IRS.

19 28. Incorporating by reference the matters alleged in paragraphs 29 and 30, cause for
20 discipline of Respondent's license for fraud in the practice of public accountancy is established
21 under Code Section 5100(c).

22 **SECOND CAUSE FOR DISCIPLINE**

23 **Dishonesty in the Practice of Public Accountancy** 24 **[Business and Professions Code § 5100(c)]**

25 29. Complainant realleges paragraphs 10 through 28 above. Incorporating those matters by
26 reference, cause for discipline of Respondent's license for dishonesty in the practice of public
27 accountancy is established under Code Section 5100(c) based upon his dishonest acts, and
28 omissions in the course of his participation, as described above, in the OPIS and BLIPS tax

1 shelters.

2 **THIRD CAUSE FOR DISCIPLINE**

3 **Gross Negligence in the Performance of Tax Engagements**
4 **[Business and Professions Code § 5100(c)]**

5 30. Complainant realleges paragraphs 8 and 10 through 28 above. Incorporating those
6 matters by reference, cause for discipline of Respondent's license for gross negligence in the
7 practice of public accountancy is established under Code Section 5100(c) based upon his
8 conduct, which constituted extreme departures from applicable professional standards.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **Failure to Observe Professional Standards in Performance of Tax Engagements**
11 **[Board Rule 58/Bus. & Prof. Code § 5100(g)]**

12 31. Complainant realleges paragraphs 8 and 10 through 28. Incorporating those matters by
13 reference, cause for discipline of Respondent's license is established in that his failure to comply
14 with professional standards applicable to tax engagements constitutes the willful violation of
15 Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

19 1. Revoking, suspending or otherwise imposing discipline upon Certified Public
20 Accountant Certificate Number CPA 29994, issued to Dale A. Affonso;

21 2. Ordering Respondent to pay the California Board of Accountancy its
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code Section 5107; and

24 3. Taking such other and further action as may be deemed proper.

25 DATED: September 9, 2008.

26 
DANIEL RICH
Acting Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant